

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

TERESA R. WAGNER,)
) Law No. 3:09-cv-10
Plaintiff,)
) MEMORANDUM OF LAW
vs.) IN SUPPORT OF OBJECTION TO
) ENTRY OF JUDGMENT ON COUNT I
CAROLYN JONES, Former Dean of)
College of Law, in her individual capacity)
)
Defendants.)

After five days of trial and two and a half days of jury deliberation, plaintiff through her undersigned counsel was informed at 4:26 p.m. by Magistrate Judge Thomas Shields that he was declaring a mistrial in light of the jury's note to him that they were deadlocked. Exhibit 1, a true and correct of plaintiff's counsel's Stephen T. Fieweger's Affidavit is attached hereto and made a part of this Memorandum.

That at approximately 11:30 a.m. on October 24, 2012, Judge Shields had informed plaintiff's counsel that the jury had sent out a note signed by 12 jury members stating that they were unable to reach a verdict in favor of either the plaintiff or the defendant.

That despite plaintiff's request for a mistrial at 3:24 p.m., since the jury appeared to be hopelessly deadlocked and despite the fact that Judge Pratt, George Carroll and Stephen Fieweger had a telephone conference at 4:00 p.m. on this issue, defense counsel never advised the court or plaintiff's counsel of Carolyn Jones' position on declaring a mistrial.

Plaintiff's request for a mistrial was due to the fact that the close of court was shortly forthcoming and that jurors become pressured to render a verdict that may be a comprised

verdict at the end of a court day, including the fact that this jury had now been deliberating for three days.

At 4:26 p.m., Magistrate Judge Thomas Shields telephoned plaintiff's counsel and informed him that he would be declaring a mistrial in light of the jury's most recent note stating that they remained deadlocked. Plaintiff's counsel informed Magistrate Shields that that was acceptable to him.

That without plaintiff's knowledge or consent after declaring a mistrial, Judge Shields reconvened the jury and requested to find out whether they had reached a verdict at all. Magistrate Judge Shields then accepted a verdict on Count I, the political discrimination claim, without plaintiff or plaintiff's counsel's knowledge or consent.

That Judge Shields did not notify plaintiff's counsel of the fact that he was going to accept a verdict on Count I, nor did he inform plaintiff's counsel that he was going to then dismiss the jury after accepting a verdict on Count I.

That at approximately 4:55 p.m., Judge Shields telephoned Stephen T. Fieweger, counsel for plaintiff, and informed him that he had accepted a verdict from the jury after having previously declared a mistrial.

That plaintiff has been denied her right under Federal Rule of Civil Procedure 48(c), the opportunity to poll the jury after the verdict is returned but before the jury is discharged. Because plaintiff was under the impression that a mistrial was going to be declared on both counts and was never informed prior to the time in which the jury was discharged that the court was accepting a verdict, plaintiff has been denied her fundamental rights to challenge this verdict by polling the jury. See Government of Virgin Island v. Hercules, 875 F.2d 414, 418-419 (3rd Dist. 1989), where the Court of Appeals held that under Federal Rules of Criminal Procedure

31(d), a jury poll is the only way to assure that there has not been undue coercion.

“Consequently the only way to effect the Rule’s goal of assuring uncoerced unanimity is to have the jury polled after the return of the verdict but before it is recorded.” The same principle applies under F.R.D.C. 48(d).

This is especially important in light of the fact that the jury had indicated five hours earlier that they were unable to render a verdict in favor of either the plaintiff or the defendant and there was no indication prior to Magistrate Judge Shields’ *sua sponte* actions that there was any change in the jury’s deliberations.

Coupled with the fact that plaintiff’s request for a mistrial never was ruled on by the trial court in light of the defendant’s failure to advise the court of the defendant’s position on that issue has fundamentally denied the plaintiff the right to a fair trial on Count I, the political discrimination claim. Plaintiff will never know now that the verdict form on Count I was completed without the opportunity to poll the jury as to whether this was actually their unanimous verdict, whether in fact it was or whether it resulted because of coerce influences due to undue pressure from one or a number of jurors on another juror or jurors in order to expedite their deliberations at the close of a court day.

WHEREFORE, for the reasons stated herein, plaintiff Teresa Wagner hereby requests this court enter an order vacating the judgment in favor of the defendant on Count I, render the verdict vacated as null and void in light of the prior declaration of the mistrial and order this case set for trial on both Counts I and II.

KATZ, HUNTOON & FIEWEGER, P.C.

By: /s/Stephen T. Fieweger

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Teresa R. Wagner

CERTIFICATE OF SERVICE

I hereby certify on October 25, 2012, I electronically filed Plaintiff's Memorandum of Law in Support of her Objection to Entry of Judgment on Count I with the Clerk of the Court using the CM/ECF System which will send notification of this filing to the following:

george.carroll@iowa.gov

George A. Carroll

By: /s/Stephen T. Fieweger

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